

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg

KIRK DOUGLAS RICHARDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Civil Action 1:10-CV-188
Criminal Action 1:05-CR-8
Judge Bailey

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel. By Local Rule, this action was referred to Magistrate Judge Joel for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Joel filed his R & R on November 28, 2011 [Crim. Doc. 63 / Civ. Doc. 24]. In that filing, the magistrate judge recommended that this Court dismiss this § 2255 petition [Crim. Doc. 25 / Civ. Doc. 1] as untimely.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v.*

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). At the time that the petition was filed, the petitioner was incarcerated in Louisiana. The petitioner was released from custody on March 31, 2011. By letter dated March 31, 2011, and docketed on April 4, 2011, the defendant provided a Notice of Change of Address [Crim. Doc. 61 / Civ. Doc. 23]. The docket reflects that the R & R was served upon the petitioner at the new address, but went unclaimed [Crim. Doc. 65 / Civ. Doc. 26]. However, when this case was transferred to the docket of the undersigned judge, service of the transfer order [Crim. Doc. 66 / Civ. Doc. 27] was accepted at the same address. [Crim. Doc. 67 / Civ. Doc. 28].

No objections having been filed, this Court will review the report and recommendation for clear error.

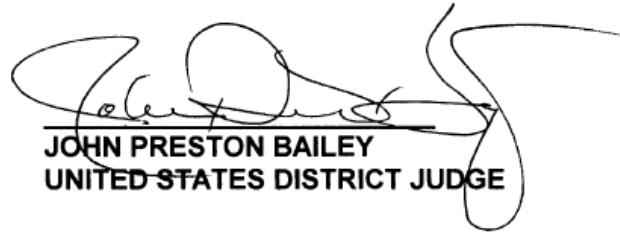
Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Crim. Doc. 63 / Civ. Doc. 24**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DENIES** and **DISMISSES** the petitioner's § 2255 petition [**Crim. Doc. 25 / Civ. Doc. 1**]. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to enter judgment in favor of the respondent.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** the petitioner a certificate of appealability, finding that he has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: June 20, 2013.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE